

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:06cr87

THIS MATTER is before the Court upon remand by the United States Court of Appeals for the Fourth Circuit. (Doc. No. 158: Order).

After this Court denied the defendant's motion for sentencing reduction (Doc. No. 149: Order), the defendant filed a notice of appeal more than ten days after entry of the judgment (Doc. No. 152: Notice of Appeal). The Fourth Circuit directed the Court to determine whether the defendant has shown excusable neglect or good cause warranting an extension of the ten-day appeal period. On July 27, 2009, the Court ordered the defendant to respond within thirty days stating any grounds for extending the time period for an appeal. (Doc. No. 160: Order). The defendant never filed such a response; instead, on September 16, 2009, the defendant filed a motion for leave to substitute grounds in his 28 U.S.C. § 2255 petition. (Doc. No. 163). Because it was not clear from the docket that the defendant was actually served with the Court's Order requiring a response, the Court directed the Clerk's office to serve the defendant another copy of the Order. (Doc. No. 165: Order).

The defendant has now responded that he never intended to appeal the Court's denial of his motion for a sentence reduction. (Doc. No. 167: Response at 1). Instead, the defendant seeks to pursue his 28 U.S.C. § 2255 petition, which has been stayed pending resolution of his direct

appeal. (Case No. 3:08cv339, Doc. No. 8: Order). Based on the defendant's response, the Court finds that the defendant has not shown excusable neglect or good cause for filing his notice of appeal late. In fact, he has clearly expressed his desire that the appeal be dismissed. (Doc. No. 167: Response at 2).

IT IS, THEREFORE, ORDERED that the Clerk serve a copy of this Order on Danny Beckham, No. 20773-058, Estill Federal Correctional Institution, Inmate Mail, P.O. Box 699, Estill, South Carolina 29918-0699 and document such action. The Clerk is further directed to notify the Fourth Circuit of the Court's findings following remand and to return the supplemented record for further proceedings.

Signed: October 9, 2009



Robert J. Conrad, Jr.
Chief United States District Judge

